In The

SUPREME COURT OF THE UNITED STATES

Supreme Court, U. S.
FILED
NOV 25 1978
MICHAEL RODAK, JR., CLERK

CASE NO. 75-728 & 76-068

In Re: ESTATE OF HERMAN BLUMREICH, Deceased:

HERMAN CALDWELL,

Appellant,

vs.

HELEN KAQUATOSH, PERSONAL REPRESENTATIVE OF THE ESTATE OF HERMAN BLUMREICH, DECEASED, et al,

Appellees.

78-5357

MOTION TO DISMISS APPEAL FROM STATE COURT

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN

This is a matter involving an illegitimate child in which a claim was made for said child to be adjudged a child of the deceased, Herman Blumreich, for which no proof has ever been supplied by the claimant.

Case No. 75-728, an appeal from an Order of the County Court Probate Branch, of Shawano County, made and entered on November 21, 1975, the Honorable Edward Herald presiding, which Order denied the application of Frederic C. Eberlein, as guardian of Herman Caldwell, for an allowance of the estate and for a determination that he was an heir-at-law of Herman Blumreich.

CASE NO. 76-068 is an appeal from an Order of the County Court, Shawano-Menominee County, Branch One, Menominee County Division, which dismissed the complaint of Frederic C. Eberlein, as Guardian Ad Litem of Herman Caldwell, which sought declaratory relief determining that Herman Caldwell was the son of the deceased Herman Blumreich, said Order of dismissal made and entered on June 28, 1976, the Honorable Ralph J. Strandberg, presiding.

Appeals in both cases were made to the Supreme Court of the State of Wisconsin. Case No. 76-068 petitioner's complaint in the declaratory judgment action was properly dismissed because, in the absence of service upon the attorney general, the courts of this State are without jurisdiction to determine the controversy. In case No. 75-728 the decision of the lower court was upheld by the Supreme Court of the State of Wisconsin and said case was dismissed.

Pursuant to Rule 16 (1) of the Rules of the Supreme Court of the United

States, Helen Kaquatosh, Personal Representative of the Estate of Herman Blumreich, deceased, et al, appellees in the above entitled action, move this Court for dismissal of said action with costs the appeal taken herein to this Court by Herman Caldwell, upon the following grounds:

1. This appeal does not present a substantial federal question.

2. Appellant has never been proved, or adjudged, to be a son of the deceased, Herman Blumreich, and as such, has no claim to his estate.

3. That the Supreme Court of the United States in Trimble vs. Gordon, 430 U.S. 762, 1977, resolved the matter at issue.

4. Case No. 76-068, petitioner's complaint for declaratory judgment was dismissed because, in the absence of service upon the attorney general, the court of the State of Wisconsin was without jurisdiction to determine the controversy.

Dated November 20, 1978.

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